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October 31, 2005

By Facsimile and First Class Mail
John A.K. Grunert, Esq.
Campbell Campbell Edwards & Conroy
One Constitution Plaza, Third Floor
Boston, MA 02129

Re: Trans-Spec Truck Service, Inc. d/b/a/ Truck Service v. Caterpillar Inc.
Civil Action No. 04-11836-RCL

Dear Attorney Grunert:

I am in receipt of your letter of October 28, 2005. Pursuant to the Federal Rules of Civil Procedure, Caterpillar had a duty to inform Trans-Spec about the five or six flywheel houses in its possession within fourteen days of the Rule 26(f) conference with the Court. Fed. R. of Civ. P. 26(a)(1) mandates that "a party must, without awaiting a discovery request, provide to other parties . . . a copy of, or a description by category and location of, all documents, data compilations, and **tangible things** that are in the possession, custody, or control of the part and that the disclosing party may use to support its claims or defenses" (emphasis added). Trans-Spec did not have to ask about the existence of any flywheel houses because Caterpillar had an obligation (which it breached) to disclose their existence.

Nowhere in *Defendant Caterpillar Inc.'s Automatic Disclosures* is there any mention of the five or six flywheel houses in Caterpillar's possession. Moreover, Caterpillar did not disclose their existence until you revealed it during a phone call with Ms. Reimer and I on October 27, 2005. In light of Caterpillar's breach of Fed. R. Civ. P. 26(a)(1), my letter of October 27, 2005 was appropriate and the only thing that is "characteristically offensive" is Caterpillar's sanctionable breach of its discovery obligations (and, as an aside, I would ask that you not revert back to the earlier days in this case, when your correspondence and pleadings routinely contained insults and lack of professional courtesy).

Rather than go to the Court to demand sanctions, however, I would like to know by the end of business on Thursday, November 3, 2005, when Caterpillar plans to make available for inspection in Boston *all* of the flywheel houses and other parts taken from Trans-Spec's trucks. The inspection must take place no later than November 11, 2005. I look forward to your response.

Very truly yours,

Christian G. Samito

cc: Nancy M. Reimer, Esq.
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